> Most people in this category can and will alter their living arrangements in order to remain eligible for food stamps. However, the AFDC mothers who try to raise their standard of living by sharing housing will be affected. They will not be able to utilize the altered living patterns in order to continue to be eligible without giving up their advantage of shared housing costs."

Thus, in practical operation, the 1971 amendment excludes from participation in the food stamp program, *not* those persons who are "likely to abuse the program" but, rather, *only* those persons who are so desperately in need of aid that they cannot even afford to alter their living arrangements so as to retain their eligibility. "Traditional" equal protection analysis does not require that every classification be drawn with precise "mathematical nicety." *Dandridge* v. *Williams*, *supra*, at 485. But the classification here in issue is not only "imprecise"; it is wholly without any rational basis. The judgment of the District Court holding the "unrelated person" provision invalid under the Due Process Clause of the Fifth Amendment is therefore

Affirmed

SUPREME COURT OF THE UNITED STATES

No. 72–534

United States Department of Agriculture et al., Appellants, *v.* Jacinta Moreno et al.	On Appeal from the United States District Court for the District of Columbia.

[June 25, 1973]

MR. JUSTICE DOUGLAS, concurring

Appellee, Jacinta Moreno, is a 56-year-old diabetic who lives with Ermina Sanchez and the latter's children. The two share common living expenses, Mrs. Sanchez helping to care for this appellee. Appellee's monthly income is $75, derived from public assistance, and Mrs. Sanchez's is $133, also derived from public assistance. This household pays $95 a month for rent, of which appellee pays $40, and $40 a month for gas and electricity, of which appellee pays $10. Appellee spends $10 a month for transportation to a hospital for regular visits and $5 a month for laundry. That leaves her $10 a month for food and other necessities. Mrs. Sanchez and the three children received $108 worth of food stamps per month for $18. But under the "unrelated" person provision of the Act,[1] she will be cut off if appellee Moreno continues to live with her.

[1] Section 3 (e) of the Food Stamp Act provides in relevant part: "The term 'household' shall mean a group of related individuals (including legally adopted children and legally assigned foster children) or non-related individuals over age 60 who are not residents of an institution or boarding house, but are living as one economic unit sharing common cooking facilities and for whom food is customarily

Appellee Sheilah Hejny is married and has three children, ages 2 to 5. She and her husband took in a 20-year-old girl who is unrelated to them. She shares in the housekeeping. The Hejnys pay $14 a month and receive $144 worth of food stapms. The Hejnys comprise an indigent household. But if they allow the 20-year-old girl to live with them, they too will be cut off from food stamps by reason of the "unrelated" person provision.

Appellee Keppler has a daughter with an acute hearing deficiency who requires instruction in a school for the deaf. The school is in an area where the mother cannot afford to live. So she and her two minor children moved into a nearby apartment with a woman—who, like appellee Keppler, is on public assistance but

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purchased in common." 7 U. S. C. § 2012 (e), as amended 84 Stat. 2048.

The Regulations provide: " 'Household' means a group of persons excluding roomers, boarders, and unrelated live-in attendants necessary for medical housekeeping or child care reasons, who are not residents of an institution or boarding house, and who are living as one economic unit sharing common cooking facilities and for whom food is customarily purchased in common:

"Provided, That:

"(1) When all persons in the group are under 60 years of age, they are all related to each other; and

"(2) When more than one of the persons in the group is under 60 years of age, and one or more other persons in the group is 60 years of age or older, each of the persons under 60 years of age is related to each other or to at least one of the persons who is 60 years of age or older." 7 CFR § 770.2 (jj).

"Eligibility for and participation in the program shall be on a household basis. All persons, excluding roomers, boarders, and unrelated live-in attendants necessary for medical, housekeeping or child care reasons, residing in common living quarters shall be consolidated into a group prior to determining if such a group is a household as determined in § 270.2 (jj) of this subchapter." 7 CFR § 271.3 (a).

who is not related to her. As a result appellee Keppler's food stamps have been cut off because of the "unrelated" person provision.

These appellees instituted a class action to enjoin the enforcement of the "unrelated" person provision of the Act.

The "unrelated" person provision of the Act creates two classes of persons for food stamp purposes: one class is composed of people who are all related to each other and all in dire need; and the other class is composed of households that have one or more persons unrelated to the others but have the same degree of need as those in the first class. The first type of household qualifies for relief, the second cannot qualify, no matter the need. It is that application of the Act which is said to violate the conception of equal protection that is implicit in the Due Process Clause of the Fifth Amendment. *Bolling* v. *Sharpe*, 347 U. S. 497, 499.

The test of equal protection is whether the legislative line that is drawn bears "some rational relationship to a legitimate" governmental purpose.[2] *Wilber* v. *Aetna Casualty & Surety Co.*, 406 U. S. 164, 172. The requirement of equal protection denies government "the power

[2] The purpose of the present Act was stated by Congress:

"to safeguard the health and well-being of the *Nation's* population and *raise levels of nutrition* among low-income households. The Congress hereby finds that the limited food purchasing power of low-income household contributes *to hunger and malnutrition* among members of such households. The Congress further finds that increased utilization of food in establishing and maintaining *adequate levels of nutrition* will promote the distribution in a beneficial manner of our agricultural abundances and will strengthen our agricultural economy, as well as result in more orderly marketing and distribution of food. To alleviate such hunger and malnutrition, a food stamp program is herein authorized which will permit *low-income households to purchase a nutritionally adequate diet* through normal channels of trade." (Italics added.) 7 U. S. C. § 2011.

to legislate that different treatment be accorded to persons placed by a statute into different classes on the basis of criteria wholly unrelated to the objective" of the enactment. *Reed* v. *Reed*, 404 U. S. 71, 76.

This case involves desperately poor people with acute problems who, though unrelated, come together for mutual help and assistance. The choice of one's associates for social, political, race, or religious purposes is basic in our constitutional scheme. *NAACP* v. *Alabama*, 357 U. S. 449, 460; *Dejonge* v. *Oregon*, 299 U. S. 353, 363; *NAACP* v. *Button*, 371 U. S. 415, 429–431; *Gibson* v. *Florida Investigating Committee*, 372 U. S. 539; *NAACP* v. *Alabama*, 372 U. S. 288. It extends to "the associational rights of the members" of a trade union. *Brotherhood of RR Trainmen* v. *Virginia*, 377 U. S. 1, 8.

I suppose no one would doubt that an association of people working in the poverty field would be entitled to the same constitutional protection as those working in the racial, banking, or agricultural field. I suppose poor people holding a meeting or convention would be under the same constitutional umbrella as others. The dimensions of the "related" person problem under the Food Stamp Act are in that category. As the facts of this case show, the poor are congregating in households where they can better meet the adversities of poverty. This banding together is an expression of the right of freedom of association that is very deep in our traditions.

Other like rights have been recognized that are only peripheral First Amendment rights—the right to send one's child to a religious school, the right to study the German language in a private school, the protection of the entire spectrum of learning, teaching, and communicating ideas, the marital right of privacy. *Griswold* v. *Connecticut*, 381 U. S. 479, 482–483.

As the examples indicate, these peripheral constitutional rights are exercised not necessarily in assemblies that congregate in halls or auditoriums but in discrete individual actions such as parents placing a child in the school of their choice. Taking a person into one's home because he is poor or needs help or brings happiness to the household is of the same dignity.

Congress might choose to deal only with members of a family of one or two or three generations, treating it all as a unit. Congress, however, has not done that here. Concededly an individual living alone is not disqualified from the receipt of food stamp aid, even though there are other members of the family with whom he might theoretically live. Nor are common-law couples disqualified: they like individuals, living alone, may qualify under the Act if they are poor—whether they have abandoned their wives and children and however antifamily their attitudes may be. In other words, the "unrelated" person provision was not aimed at the maintenance of normal family ties. It penalizes persons or families who have brought under their roof an "unrelated" needy person. It penalizes the poorest of the poor for doubling up against the adversities of poverty.

But for the constitutional aspects of the problem, the "unrelated" person provision of the Act might well be sustained as a means to prevent fraud. Fraud is a concern of the Act. 7 U. S. C. §§ 2023 (b) and (c). Able bodied persons must register and accept work or lose their food stamp rights. 7 U. S. C. § 2014 (c). I could not say that this "unrelated" person provision has no "rational" relation to control of fraud. We deal here, however, with the right of association, protected by the First Amendment. People who are desperately poor but unrelated come together and join hands with the aim better to combat the crises of poverty. The need of those living together better to meet those

crises is denied, while the need of households made up of relatives that is no more acute is serviced. Problems of the fisc, as we stated in *Shapiro* v. *Thompson*, 394 U. S. 618, 633, are legitimate concerns of government. But government "may not accomplish such a purpose by invidious distinctions between classes of its citizens." *Id.*, 634.

The legislative history of the Act [3] indicates that the "unrelated" person provision of the Act was to prevent "essentially unrelated individuals who voluntarily chose to cohabit and live off food stamps" [3]—so-called "hippies" or "hippy communes" from participating in the Food Stamp program. As stated in the Conference Report,[4] the definition of household was designed to prohibit food stamp assistance to communal 'families' of unrelated individuals."

The right of association, the right to invite the stranger into one's home is too basic in our constitutional regime to deal with roughshod. If there are abuses inherent in that pattern of living against which the Food Stamp program should be protected, the Act must be "narrowly drawn," *Cantwell* v. *Connecticut*, 310 U. S. 296, 307, to meet the precise end. The method adopted and applied to these cases makes § 3 (e) of the Act unconstitutional by reason of the invidious discrimination between the two classes of needy persons.

Dandridge v. *Williams*, 397 U. S. 471, is not opposed. It sustained a Maryland grant of welfare, against the claim of violation of equal protection, which placed an upper limit in the monthly amount any single family could receive. The claimants had large families so that their standard of need exceeded the actual grants. Their claim was that the grants of aid considered in light of

[3] See 116 Cong. Rec. 42003.

[4] H. R. Rep. No. 91–1793, 91st Cong., 2d Sess., p. 8.

the size of their families created an invidious discrimination against them and in favor of small needy families. The claim was rejected on the basis that state economic or social legislation had long been judged by a less strict standard that comes into play when constitutionally protected rights are involved. *Id.*, at 484–485. Laws touching social and economic matters can pass muster under the Equal Protection Clause though they are imperfect, the test being whether the classification has some "reasonable basis." *Id.*, at 414. *Dandridge* held that "the Fourteenth Amendment gives the federal courts no power to impose upon the States their views of what constitutes wise economic or social policy." *Id.*, at 486. But for the First Amendment aspect of the case, *Dandridge* would control here.

Dandridge, however, did not reach classifications touching on associational rights that lie in the penumbra of the First Amendment. Since the "related" person provision is not directed to the maintenance of the family as a unit but treats impoverished households composed of relatives more favorably than impoverished households having a single unrelated person, it draws a line that can be sustained only on a showing of a "compelling" governmental interest.

The "unrelated" person provision of the present Act has an impact on the rights of people to associate for lawful purposes with whom they choose. When state action "may have the effect of curtailing the freedom to associate" it "is subject to the closest scrutiny." *NAACP* v. *Alabama*, *supra*, at 460–461. The "right of the people peaceably to assemble" guaranteed by the First Amendment covers a wide spectrum of human interests—including, as stated in *NAACP* v. *Alabama*, at 460, "political, economic, religious, or cultural matters." Banding together to combat the common foe of hunger is in that

category. The case therefore falls within the zone represented by *Shapiro* v. *Thompson, supra,* which held that a waiting period on welfare imposed by a State on the "in-migration of indigents" penalizing the constitutional right to travel could not be sustained absent a "compelling governmental interest." 394 U. S., at 634.

SUPREME COURT OF THE UNITED STATES

No. 72-534

United States Department of Agriculture et al., Appellants, *v.* Jacinta Moreno et al.	On Appeal from the United States District Court for the District of Columbia.

[June 25, 1973]

MR. JUSTICE REHNQUIST, with whom THE CHIEF JUSTICE concurs, dissenting.

For much the same reasons as those stated in my dissenting opinion in *United States Department of Agriculture* v. *Murry*, — U. S. —, I am unable to agree with the Court's disposition of this case. Here appellees challenged a provision in the Federal Food Stamp Act, 7 U. S. C. § 2011 *et seq.*, which limited food stamps to related people living in one "household." The result of this provision is that unrelated persons who live under the same roof and pool their resources may not obtain food stamps even though otherwise eligible.

The Court's opinion would make a very persuasive congressional committee report arguing against the adoption of the limitation in question. Undoubtedly Congress attacked the problem with a rather blunt instrument, and just as undoubtedly persuasive arguments may be made that what we conceive to be its purpose will not be significantly advanced by the enactment of the limitation. But questions such as this are for Congress, rather than for this Court; our role is limited to the determination of whether there is any rational basis on which Congress could decide that public funds made available under the food stamp program should not go

to a household containing an individual who is unrelated to any other member of the household.

I do not believe that asserted congressional concern with the fraudulent use of food stamps is, when interpreted in the light most favorable to sustaining the limitation, quite as irrational as the Court seems to believe. A basic unit which Congress has chosen for determination of availability for food stamps is the "household," a determination which is not criticized by the Court. By the limitation here challenged, it has singled out households which contain unrelated persons and made such households ineligible. I do not think it is unreasonable for Congress to conclude that the basic unit which it was willing to support with federal funding through food stamps is some variation on the family as we know it—a household consisting of related individuals. This unit provides a guarantee which is not provided by households containing unrelated individuals that the household exists for some purpose other than to collect federal food stamps.

Admittedly, as the Court points out, the limitation will make ineligible many households which have not been formed for the purpose of collecting federal food stamps, and will at the same time not wholly deny food stamps to those households which may have been formed in large part to take advantage of the program. But, as the Court concedes, " 'traditional' equal protection analysis does not require that every classification be drawn with precise mathematical nicety,' " *ante*, p. 10. And earlier this term, the constitutionality of a similarly "imprecise" rule promulgated pursuant to the Truth-in-Lending Act was challenged on grounds such as those urged by appellees here. In *Mourning* v. *Family Publications Service, Inc.*, — U. S. — (1973), the imposition of the rule on *all* members of a defined class was sustained because it served

to discourage evasion by a substantial portion of that class of disclosure mechanisms chosen by Congress for consumer protection.

The limitation which Congress enacted could, in the judgment of reasonable men, conceivably deny food stamps to members of households which have been formed solely for the purpose of taking advantage of the food stamp program. Since the food stamp program is not intended to be a subsidy for every individual who desires low cost food, this was a permissible congressional decision quite consistent with the underlying policy of the Act. The fact that the limitation will have unfortunate and perhaps unintended consequences beyond this does not make it unconstitutional.